

Guidelines and Interpretations of the Connecticut Real Estate Licensing Law

*Developed
By
The Connecticut Real Estate Commission
In association with
The Connecticut Association of REALTORS®, Inc.*

PREFACE

The following questions and answers were compiled by the Connecticut Real Estate Commission in Cooperation with the Connecticut Association of REALTORS®, Inc. The purpose of this material is to provide individuals licensed under the Connecticut Real Estate Licensing Law and the general public with guidelines and information relating to the real estate industry. The answers that are set forth below are to questions which are frequently asked of the Connecticut Real Estate Commission and are based upon interpretations of existing law and regulations and not upon the bylaws, code of ethics or rules of any private organization. The statements contained herein are for informational purposes only and should not be relied upon as a matter of law or as the policy of the Real Estate Commission for any particular set of facts. All reference below to "Commission" means the Connecticut Real Estate Commission and to "Regulations" means the Regulations under §20-328 concerning the conduct of real estate brokers and salesmen.

QUESTIONS AND ANSWERS

Compensation Agreements

~ *At what point is a written agreement with a real estate licensee required?*

First, in order to enforce the payment of a commission relating to the sale or rental of real estate in the Connecticut courts, Conn. Gen. Stats. §20-325 a (b) requires that there be a written compensation agreement which contains the names of all the parties, the broker's address, show the date on which it was entered into, contain the conditions of the agreement and be signed by the parties. This is the case whether the compensation agreement is a listing agreement or a buyer representation agreement. In addition, Regulations §20-328-1 requires that all such agreements be in writing and include, among other things, the expiration date of the agreement.

Secondly, Regulations §20-328-11 requires that no licensee shall demand a commission unless reasonable cause for payment of the commission exists, and the absence of a written compensation agreement could raise a serious question as to whether there is "reasonable cause for payment of the commission" existing.

Finally, the Commission requires that a written listing agreement be in existence at or prior to the offering of a property for sale, and that a buyer representation agreement be in existence before physically showing another firm's listing.

~ *Does a broker need a written listing agreement to rent property?*

A real estate license is required when commissions are paid for the *rental* of real estate. Although Regulations §20-328-1 does not require a written listing agreement for the rental of properties, Conn. Gen. Stats. §20-325 a(b) requires a written listing agreement in order to utilize the Connecticut courts to enforce the payment of a commission for *any* "acts done or services rendered" which requires a person to be licensed as a real estate broker or salesperson.

~ *Must there be a termination date in a listing or buyer representation agreement?*

Reg. §20-328-6a(2)(1) and §20-328-6a(2)(2) requires that a written listing or buyer representation agreement include, among other things, an "expiration date." The commission interprets this phrase to require that there be a specific date or a fixed time period, e.g., 90 days from the date of this contract.

Also, Conn. Gen. Stats. §20-320(6) prohibits an automatic continuation of the period of the listing agreement beyond the expiration date.

~ *May a broker take an exclusive listing or buyer representation agreement while another is in effect if it has an effective date after the termination of the existing exclusive listing or buyer representation agreement?*

Yes. However, the broker must be careful that there is no overlapping of effective dates and is cognizant of Reg. §20-328-9a(c) which requires that no licensee shall "induce or attempt to induce an owner of property to breach or terminate an exclusive listing contract of sale or lease for the purpose of substituting in lieu thereof a new contract." A similar provision applies to buyer representation agreements.

Also, care should be taken that the date that the listing or buyer representation contract is entered into (*not* the effective date) is clearly stated on the contract; otherwise, a Connecticut court will not enforce the payment of a commission because Conn. Gen. Stat. §20-325 a(b) specifically requires that the listing or buyer representation agreement show the date on which it was entered into.

~ *May a listing agreement contain a protection period?*

A protection period or extender in a listing agreement typically provides that if the property is sold within a specified period of time after the expiration date of the Listing Agreement to someone who the broker introduced to the property, the broker will be entitled to a commission.

The use of such a clause can create a number of problems. For example, does a listing agreement with a second broker which is entered into immediately after the first listing agreement expires negate the protection period contained in the first listing agreement? A subsequent listing by the owner should negate the protection period so as to prevent the owner from paying two commissions. What happens if the second listing agreement is an exclusive agency or if it is an open listing agreement?

Depending upon how the protection period is drafted, the inclusion of a protection period could constitute a violation of the licensing law.

~ *What is a co-exclusive listing agreement and is it legal?*

A co-exclusive listing is a listing on a single property on an exclusive basis by two or more licensees. It is effectively a joint venture relating to a single listing. Such an arrangement is not prohibited under the Connecticut real estate licensing laws.

However, where a co-exclusive is used care must be exercised by the agents to assure that the seller has a thorough understanding of the obligation and responsibilities *between* the seller and the agents as well as to the obligations of seller *to* the agents. The agreement should set forth the respective duties of each agent and a clear statement as to the division of compensation between the agents and the seller. Care must be taken to avoid the possibility of creating a legal obligation on the part of the seller to pay two commissions. Failure to spell out the essential terms of this agreement could violate Reg. §30-328-6a.

~ *Is it permissible for a broker to sign a seller's name to a listing agreement, with or without his oral authority?*

No. Signing a listing agreement without the owner's authority would constitute fraud or forgery. Conn. Gen. Stat. §20-320 (11) provides that a broker can lose his license for fraudulent or dishonest conduct. A listing agreement signed by the broker on the seller's oral authority would not be enforceable. Conn. Gen. Stat. §20-325a provides that, in order to be enforceable, a listing agreement must be signed by the seller or owners' agent. For the purposes of this statute, a person can only be authorized as an agent by written document, duly signed, witnessed and notarized, such as a power of attorney.

~ *Who must sign a compensation agreement for it to be enforceable?*

For listing agreements to be enforceable under Connecticut law, there are a number of specific requirements. One of these requirements is that, for property containing a one to four family residence, the listing agreement must be

signed by the record owner and real estate broker. A listing for commercial real property must be signed by the real estate broker and the person against whom the listing agreement will be enforced. Buyer representation agreements must be signed by the real estate broker and the prospective buyer(s).

As a result of an amendment to Conn. Gen. Stat. §20-325 a(b), authorized agents of the owner and real estate broker may not satisfy this requirement. Authority is in writing, witnessed by two people, and acknowledged by a notary public or commissioner of the superior court to be the free act and deed of the owner.

The real estate broker may also authorize other licensed persons sponsored or employed by, or affiliated with, such broker to sign the listing agreement on his behalf, but the same degree of formality is not required of the real estate broker.

~ *When the owner of property enters into an exclusive listing agreement (either an exclusive right to sell or an exclusive agency), does it automatically terminate any existing open listings on the same property?*

The contractual provisions of an open listing agreement will govern the situation. Often the terms of an open listing agreement will only provide for termination in the event of either party giving the other written notice of termination. If the parties, in fact, intend that the contract should end when an exclusive listing agreement is entered into with respect to the same property, then the open listing should include among its terms that it will terminate automatically when such an exclusive agreement is entered into.

~ *Can a homeowner cancel an exclusive listing agreement without the consent of the listing agent?
Can a prospective buyer cancel an exclusive representation agreement without the agent's consent?*

An exclusive listing agreement is a bilateral contract between the homeowner and the listing agent which involves the mutual promises of both parties. Therefore, unless the terms of the listing agreement itself provided otherwise, the termination of such a listing agreement would require the mutual consent of the parties to it. A buyer representation agreement is a bilateral contract between the prospective buyer and the buyer agent which involves the mutual promises of both parties. Therefore, unless the terms of the buyer representation agreement itself provided otherwise, the termination of such an agreement would require the mutual consent of the parties to it.

Licensing

~ *Is a real estate license required for those who rent or manage properties for another and for a fee?*

Yes. The Commission interprets the word "manage" to include services involving the collection of rents and/or the offering of property for rental and therefore such services, would be covered under the licensing statute §20-312.

~ *May an applicant for a real estate salesperson's license who has broad governmental or corporate real estate experience substitute such experience for the required Principals and Practices Course?*

No. It is the practice of the Commission to permit the substitution of experience for experience and education for education, but not experience for education or education for experience.

~ *Can a Connecticut builder sell his own homes and not be licensed?*

Yes. Conn. Gen. Stats. §20-329 exempts from the licensing statutes "any person who as owner . . . (sells or rents) . . . property owned, leased or sought to be acquired or leased by him, . . . when such acts are performed in the regular course of, or is an incident to, the management of such property and the investment therein . . ." This exemption does not extend to corporate officers or the employees of a corporation or LLC.

~ *Are real estate brokers required to post in their offices a public accommodations notice?*

Yes. Conn. Gen. Stat. § 46a-64(a)(3) requires the posting of such notice and failure to do so could result in a fine or imprisonment, or both.

Deposits

~ *When a deposit is placed on a property, should the property be immediately withdrawn from the market?*

When a deposit is taken as part of an offer to purchase property, the property should be removed from the market only upon the agreement between the listing broker and the seller or when a binding purchase contract between the seller and the buyer is entered into. There can be circumstances where it is in the interest of the seller to continue to offer to sell the property after a deposit has been taken and purchase contract entered into. For example, the purchase contract may contain a contingency clause which may be difficult to satisfy. However, under such circumstances care must be taken on the part of both the listing broker and the seller to disclose the existence of the purchase contract to any other potential buyers and brokers who may be submitting offers and deposits. Also, the listing broker should exercise a great deal of caution in any further advertising of the property.

In any event, the property should not be removed from the market where simply a deposit has been taken as part of an offer that is being communicated to the seller, unless the seller has so directed the listing broker.

~ *If a seller fails to perform under a purchase and sales agreement, may the broker retain any portion of the buyer's deposit, which the broker is holding, in order to satisfy his claim for a commission that may have been earned?*

No. The broker may not retain any portion of any deposit monies of the purchaser held by him, even though a commission may have been earned. Reg. §20-328-12.

~ *In what kind of bank account should a broker hold the deposits taken by him in escrow?*

Conn. Gen. Stat. §20-324k requires all real estate brokers to keep a separate escrow or trust account which is distinct from the broker's own account. Conn. Gen. Stat. §8-265f requires that this be an interest-bearing account with the interest paid to the Connecticut Housing Finance Authority. Of course, the buyer and seller may negotiate any mutually acceptable manner of holding the deposit. Connecticut General Statutes § 20-324k(c) requires that a broker should deposit monies in his escrow or trust account within three banking days of receipt of the deposit "pending final legal disposition . . . in accordance with the instructions of the person legally entitled . . ."

~ *If a broker is holding a deposit in defaulted transaction and both parties claim the deposit, what should the broker do with the funds?*

Because parties disagree as to who is legally entitled to the deposit, the broker should retain the deposit in the

broker's escrow or a trust account until there is a mutual agreement of the parties or a legal disposition of the deposit. Otherwise, payment to a party who is later determined by a court not to be legally entitled to it may subject the broker to legal damages.

~ *What responsibilities does a real estate salesman have with respect to a deposit received as part of a real estate transaction?*

Under Regulations Section 20-328-7a(b), every real estate salesman is required to promptly pay over such monies to the real estate broker with whom he is affiliated or employed, whether or not the transaction is completed at that time.

~ *When a salesperson changes designated brokers with whom he is associated, to what extent and when is the salesperson entitled to commissions from his former designated broker?*

The question of when compensation is due and payable from a broker to a salesperson depends upon the agreement which exists between them. Although it not required by the License Law, it is recommended that any such compensation arrangements be in writing and address the disposition of such compensation upon termination of affiliation between the salesperson and the broker. A written independent contractor agreement is required to take advantage of certain tax, worker's compensation and other exemptions to which the independent contractor arrangement is entitled.

The following situations should also be considered in such agreements:

- (a) Listings taken on property which is not sold until after the termination of the salesperson, and
- (b) Properties which are sold before termination of the sales person but closed after such termination.

~ *Under what circumstances is a principal responsible for the wrongful acts of his salesmen?*

An employer is responsible for the wrongful acts of his employees, whether such acts are done purposely or negligently, if they are committed within the scope of employment and in furtherance of the employer's business. In each case, it is a question of fact whether the action was within the scope of the employment and for the benefit of the employer. Conn. Gen. Stat. §20-312a provides that, in an action brought by a third party, a broker will be liable for the acts of those affiliated as independent contractors to the same extent if they were employees.

Offers

~ *Can an Owner refuse an offer which satisfies all of the conditions of the listing agreement? What about the Owner who receives several offers?*

The Owner is not required to accept an offer from a Buyer unless the Owner's refusal would constitute a violation of Federal or State Fair Housing Laws. However, the Owner may still be liable to pay the commission if such offer satisfies all the conditions of the listing agreement.

An Owner is not required to deal with offers in any particular sequence or in any particular manner. In other words, the Owner may negotiate on other offers received from other potential buyers even if those offers were presented after the first buyer's offer.

~ *What constitutes an offer to purchase real estate which when accepted by the Owner will become an enforceable contract?*

An offer for the purchase of real estate must be in writing, contain all essential terms and conditions and be communicated to the Seller or his agent in order for the agreement to be enforceable.

Regulation §20-328-2a(d) requires that no licensee shall submit a written offer unless it contains all the essential terms and conditions including the manner in which the purchase is to be financed.

~ *Is a listing broker required to submit all offers to a Seller?*

Yes. Any agent has the duty and obligation to present all offers to the agent's client. Failure to submit such offers could result in the violation of Regulation §20-328-2a(e) which requires that all offers and counteroffers be submitted; or a claim by the Commission that such acts constitute "dishonest, fraudulent or improper dealings" and therefore could result in loss of license. Section 20-320.

~ *Is there any time period in which an offer should be submitted by the broker to the Seller?*

General agency law requires that a broker, as the agent for the Seller, must perform his duties in a diligent and expeditious manner. The duties of the broker, as agent, would require that he submit all offers as soon as possible considering the particular circumstances.

~ *How should the broker submit more than one offer on a property?*

The broker, as agent for the Seller, has the duty to present all offers as soon as practicable considering the particular circumstances and in a manner which will keep the Seller fully informed. Acting in this fashion provides the Seller with all of the available information so that the Seller may make that decision which is in his best interest.

~ *May a listing broker refuse to communicate to the seller an offer being presented by a selling broker (subagent) on the grounds that the deposit check is not made payable to the listing broker?*

The listing broker as an agent of the seller has the duty and obligation to present all offers to the seller as soon as possible considering the particular circumstances.

~ *What are the responsibilities of a broker/agent to review the specific terms of a contract for the sale when presenting such contract to the seller?*

The broker/agent has a responsibility to review the essential terms and conditions of the contract with the seller, so that the seller can make an informed decision to whether or not to sign such contract. Connecticut regulations provide that no licensee shall submit to an owner a written offer to purchase unless such offer contains the essential terms and conditions of the contract, including the manner in which the purchase is to be financed. If such offer is contingent upon certain conditions, such conditions must be clearly set forth therein, unless such offer is conditioned upon the later execution of a complete agreement of sale. Regulations Section 20-328-6a(b). A broker's failure to review and describe all of the material terms and conditions of such a contract would probably constitute a breach of the agent's fiduciary duty to the seller.

Fair Housing

~ *A buyer believes that a broker and/or a seller discriminated against him; can the buyer file a complaint with the Real Estate Commission?*

The Commission encourages receipt of any information pertaining to matters involving fair housing. The Commission has entered into an affirmative fair housing marketing agreement with the United States Department of Housing and Urban Development. The purpose of this agreement is to ensure that opportunities in the real estate field are equally available to all, regardless of minority status, and to ensure that persons in the real estate business are informed of, and held to, the responsibilities under the fair housing laws. The Commission is committed to utilizing its powers, to the extent possible, to achieve these objectives.

Any information which the Commission becomes aware of relating to alleged violations of the fair housing laws will be forwarded to the appropriate agencies which may include the United States Department of Housing and Urban Development and The Connecticut Commission on Human Rights and Opportunities.

To the extent that the Commission has the authority over its licensees, it will act accordingly in response to any findings by these agencies with respect to any violations.

~ *Is it permissible for a broker to obey the wishes of a seller of a single family dwelling if the seller wishes to discriminate on the basis of race, color, religion, national origin, disability, lawful source of income, ancestry, marital status, mental retardation or sex?*

No. There are no circumstances which allow a broker to engage in discriminatory practices. Section 20-328-4a of the Regulations state: "A licensee shall neither deny equal professional services to any person nor be party to any plan or agreement to discriminate. . ." Neither the exemptions in the Connecticut Fair Housing Act (Conn. Gen. Stat. §46a-64) nor the exemptions in the federal Fair Housing Act (42 U.S.C. §3601 et. seq.) permit brokers to participate in any discrimination in the offering, advertising or sale of property on the basis of any of the factors set forth in the question.

~ *May a broker, at the direction of the landlord, discriminate in renting on the basis of the prospective tenant's race, color, religion, national origin, disability, lawful source of income, ancestry, marital status, mental retardation or sex?*

No. Whether the property is owner occupied or not, the prohibitions on discrimination by brokers in the sale of property apply equally to the rental of real property.

~ *Under the Connecticut Fair Housing Act, can a landlord elect not to rent to a man and a woman who are not married to one another?*

Yes. It is lawful for a *landlord* to choose not to rent to a man and a woman who are not married and who are not related by blood.

~ *May a landlord chose not to rent to a physically handicapped person?*

No. The Connecticut Fair Housing Act prohibits discrimination in the rental of property on the basis of mental retardation or physical handicap (except in the rental of single or two-family home and in all owner-occupied

dwellings with four units or less). This prohibition however does not require a landlord to modify or redesign his property to meet the need of a handicapped person. Conn. Gen. Stat. §46a-64(b)(5).

Agent Relationship

~ *May an agent purchase property that he has listed or shown as a buyer agent?*

Yes. The licensing law requires that a licensee may not act for more than one party in a transaction without the knowledge of all parties for whom he acts, Connecticut General Statute Section 20-325g. However, the law of agency requires that an agent act in a manner which is in the best interests of his principal and therefore the agent should disclose his capacity as purchaser to all interested parties.

~ *If a real estate licensee is advertising to sell or lease his own property, must he disclose the fact that he is a real estate licensee?*

Yes. Regulation Section 20-328-2a(b) requires that the licensee reveal the extent of the licensee's interest in the property to the prospective buyer.

~ *Can a broker or salesman recommend a specific attorney, home inspector, pest inspector, etc. for a real estate transaction?*

Yes. A broker or salesperson may recommend to a seller or buyer the services of a particular attorney or other professional. An acceptable business practice used by many brokers is to provide several recommendations when requested to do so. Article 13 of the Code of Ethics of the National Association of REALTORS® encourages REALTORS® to recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Doing Business in an other State

~ *May a licensee advertise and offer Connecticut property in another state?*

Connecticut does not prohibit this type of activity. However, the laws of the state in which the property is being advertised should be reviewed to avoid any violations.

Home Warranty Program

~ *Who can sell a home warranty program in the State of Connecticut?*

In Connecticut only a licensed insurance agent may legally offer and collect a commission on a home warranty policy.

Fees Paid By Broker

~ *Is it a violation of the Connecticut real estate licensing law or regulations for a broker to offer to pay a rebate or other inducement for or to a buyer of listed property?*

No. Reg. § 20-328-16 provides as follows:

"No licensee shall offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of his commission or compensation arising or accruing from any real estate transaction to any person who is not licensed as a real estate broker or real estate salesman."

The purpose and interpretation of this regulation is to prevent unlicensed individuals from receiving compensation if they *engage in the real estate business* as defined under the licensing law. In the typical residential transaction, the buyer is not a person who is engaged in the real estate business and therefore, payment of the rebate or other inducement by the broker to the *buyer*, or for his benefit, would not be a payment to a person who is engaging in the real estate business. Therefore, such payment is not the type of situation intended to be covered by these regulations.

Commissions

~ *What is procuring cause?*

Procuring cause is the principle of law that establishes which broker is entitled to the selling commission in a real estate transaction. It is a principle difficult to define with any degree of certainty. Fundamentally, procuring cause means that the broker must be the "efficient, procuring, or inducing cause of the sale." The sale must be the "direct and proximate result" of the efforts or services of an individual duly licensed under the Connecticut real estate licensing laws. All ascertainable and relevant facts surrounding the transaction in question must be weighed including the full course of conduct of the parties, their relationship, and their understandings in order to determine the extent to which the acts of each of the parties produced or contributed to the transaction from which the dispute arose.

Although the question of procuring cause is a factual one, there are certain legal concepts that govern. A point which can easily be overlooked or misunderstood is that only *one* broker can be considered the predominate procuring cause of a transaction. This means that where two brokers each claim to be the procuring cause and thereby the selling broker, the selling commission should be paid to only one of those two parties. The selling commission cannot be divided between the two brokers claiming it unless they agree between themselves.

As noted above, the full course of conduct of the brokers claiming the selling commission must be considered. Nevertheless, there are certain factors or questions which can be used to identify the pertinent elements of procuring cause. The following factors are indicative of those which should be considered in most situations, recognizing that all will not necessarily be present in each situation and that others may be:

(1) Who was the listing agent? Under Connecticut law no broker may enforce the payment of a commission unless he has a specific written agreement with the seller of the property. Conn. Gen. Stats. 20-325a.

(2) Were both of the brokers claiming the selling commission authorized to act as agent of the principal or sub-agent of the listing broker and under what terms?

(3) Who first introduced the customer to the property and how was such introduction made? Although this information is highly relevant to the question of procuring cause, this factor alone cannot be determinative.

(4) Did the first or original introduction to the property actually originate an uninterrupted series of

events leading to the sale? Or, was the original series of events hindered or terminated at any point for cause, such as abandonment or estrangement of a customer by the agent?

(5) How did the second introduction to the property occur?

(6) Was an agency disclosure form given to the buyer and if so, by whom?

Ultimate Decision

Based on the above factors, answers to the following two questions would be very helpful in determining who is entitled to the selling commission:

(1) Did the original introduction to the property originate an uninterrupted series of events leading to the successful completion of the transaction, or did the series of events falter and die?; or

(2) Did the subsequent or second introduction, start a second or separate series of events which were not dependent upon the first introduction and/or negotiation on the property, with the series of events of the second introduction leading to the successful transaction?

If the brokers claiming the selling commission cannot resolve the dispute between themselves, the matter can be submitted to appropriate arbitration facilities or to a court of law.

Continuing Education

~ *What are the continuing educational requirements for licensed real estate brokers and salesman under Conn. Gen. Stat. §20-319(a)?*

In order for a licensed real estate person to renew his license, he must satisfy one of three minimum requirements as to continuing his education:

- a. The licensee must complete twelve classroom hours of continuing education courses that have been approved by the Real Estate Commission during a two-year period preceding renewal of the license; or
- b. Pass a written, personal examination approved by the Real Estate Commission during the same two-year period; or
- c. Demonstrate to the Commission that he has the equivalent educational experience or study taken during the appropriate two-year period. The applicable regulations indicate that "equivalent education experience and study" could be (i) any pre-licensing courses that have previously been approved by the Commission, such as real estate principals and practice and real estate appraisal; (ii) other continuing education courses which are considered on an individual basis at least 90 days prior to the end of the applicable two-year period.

~ *Are there any exceptions to the continuing educational requirements?*

An individual in the military service or a person whose handicap prevents such person from sitting for the exam or from satisfying the course requirements may be exempt, or a person teaching the pre-licensing qualification course.

~ *Are there any prohibitions as to where continuing education courses can be held?*

Yes. The continuing education courses may not be held on the premises of a real estate brokerage office or the offices of a real estate franchise.

~ *Is there a grandfather clause for continuing education courses?*

No.